

AMENDED IN SENATE JUNE 18, 2013

AMENDED IN ASSEMBLY MAY 7, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1217

Introduced by Assembly Member Lowenthal
(~~Coauthor: Senator~~ *Coauthors: Senators Beall and Price*)

February 22, 2013

An act to add Chapter 13 (commencing with Section 1796.10) to Division 2 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1217, as amended, Lowenthal. Home Care Services Consumer Protection Act of 2013.

Existing law provides for the In-Home Supportive Services (IHSS) program, a county-administered program under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. The IHSS program includes various eligibility requirements for individuals who provide services to recipients under the program. Under existing law, a private provider of in-home care services is not subject to the requirements of the IHSS program.

Existing law provides for the licensing and regulation of various community care facilities by the State Department of Social Services.

This bill would enact the Home Care Services Consumer Protection Act of 2013, which would provide, on and after July 1, 2014, for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, and the certification of home care aides. The bill would exclude specified entities from the definition of a home care organization. The bill would impose various licensure

requirements on a home care organization. The bill would also impose a civil penalty on an individual or entity that operates a home care organization without a license, except as specified. The bill would require a home care organization to provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services, and the extent to which payment may be expected from specified sources. In addition, this bill would require a home care organization, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and providing proof of certification as a home care aide, as specified.

The bill would require certain employment agencies to maintain liability insurance, as specified, and ensure that any person it refers to provide home care services has been certified prior to the referral.

This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified. The bill would require the department to impose various fees to be deposited in the Home Care Organization and Home Care Aide Fund to be created by this bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act by a home care organization or a home care aide and violations of specified requirements by an employment agency, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Seniors, individuals with disabilities, and the frail elderly
- 4 frequently find themselves in need of part-time to full-time
- 5 assistance from a caregiver in order to live at home independently.

1 (b) Out of the 701,000 estimated home care aides working in
2 the country, more than 70,000 work in California.

3 (c) The Employment Development Department has identified
4 home care services as one of the fastest growing fields of
5 employment.

6 (d) In California, most individuals hiring a home care
7 organization believe that the home care aide entering their home
8 has been thoroughly screened and trained. However, a business
9 license is the only requirement needed to provide nonmedical home
10 care services in an individual's home.

11 (e) In view of the increasing number of home care aides entering
12 private homes, the number of incidents of abuse and neglect by
13 home care aides currently being reported in the media is alarming
14 and concerning because, according to prosecutors, for every
15 reported incident of abuse or neglect, four others go unreported.

16 (f) Twenty-three states, including Texas, Illinois, Florida, and
17 New York, have standards requiring home care organizations to
18 register or obtain a license.

19 (g) Discharge planners commonly maintain lists of home care
20 aides and home care organizations for purposes of patient referral
21 without any information about the individuals or the organizations,
22 thereby placing both the patient and the referring organization at
23 risk.

24 (h) Typically, family members looking for home care services
25 are in a crisis and will not ask all of the "right" questions when
26 choosing a home care organization or an individual provider. In
27 addition, there is currently no centralized list of home care
28 organizations or individual providers in California for family
29 members, seniors, or disabled individuals to consult when in need
30 of home care services for their loved ones or themselves.

31 SEC. 2. Chapter 13 (commencing with Section 1796.10) is
32 added to Division 2 of the Health and Safety Code, to read:

33
34 CHAPTER 13. HOME CARE SERVICES

35
36 Article 1. General Provisions

37
38 1796.10. This chapter shall be known and may be cited as the
39 Home Care Services Consumer Protection Act of 2013.

1 1796.11. The State Department of Social Services shall
2 administer and enforce this chapter.

3 1796.12. For purposes of this chapter, the following definitions
4 shall apply:

5 (a) “Client” means an individual who receives home care
6 services.

7 (b) “Department” means the State Department of Social
8 Services.

9 (c) “Employment agency” means an employment agency that
10 procures, offers, refers, provides, or attempts to provide but is not
11 the employer of, a home care aide who provides home care services
12 to clients and consumers in accordance with Section 1812.5095
13 of the Civil Code, as long as the agency is not the employer of a
14 home care aide or other worker who provides assistance with
15 activities of daily living to the consumer.

16 (d) “Family member” means any person who is related to the
17 person who receives home care services. This relationship shall
18 be by blood, adoption, marriage, domestic partnership, or affinity
19 within the fifth degree of kinship, including stepparents,
20 stepsiblings, and all relatives whose status is preceded by the words
21 “great,” “great-great,” or “grand” or the spouse of any of these
22 persons, even if the marriage was terminated by death or
23 dissolution.

24 (e) “Geographic location” means the city or county in which
25 the home care organization is located.

26 (f) (1) “Home care aide” means an individual who provides
27 home care services to a client in the client’s residence, and is
28 synonymous, for purposes of this chapter, with “caregiver,”
29 “custodial care,” “personal care attendant,” “homemaker,” and
30 “companion.” In addition, “home care aide” includes an individual
31 who qualifies as a personal attendant, as defined in Industry Wage
32 Order 15-2001, issued by the Industrial Welfare Commission, who
33 provides home care services.

34 (2) “Home care aide” does not include either of the following:

35 (A) A family member of the person who receives home care
36 services.

37 (B) A person who is employed by, or contracts with, an
38 organization vendored or contracted through a regional center or
39 the State Department of Developmental Services pursuant to the
40 Lanterman Developmental Disabilities Services Act (Division 4.5

(commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

(g) (1) “Home care organization” or “home care agency” means an individual, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for the provision of home care services by a home care aide to a client in the client’s residence and that is licensed pursuant to this chapter.

(2) “Home care organization” does not include any of the following:

(A) A home health agency licensed under Chapter 8 (commencing with Section 1725).

(B) A hospice licensed under Chapter 8.5 (commencing with Section 1745).

(C) A health facility licensed under Chapter 2 (commencing with Section 1250).

(D) A county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, without regard to whether the county provides these services as a public authority or through a nonprofit consortium established pursuant to Section 12301.6 of the Welfare and Institutions Code.

(E) A home medical device retail facility licensed under Section 111656.

(F) An organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services

1 and more than 50 percent of the recipients of the home care services
2 provided by the organization are persons with developmental
3 disabilities.

4 (G) An employment agency, as defined in Section 1812.5095
5 of the Civil Code, that procures, offers, refers, provides, or attempts
6 to provide a home care aide or other worker who provides home
7 care services or domestic services to clients and consumers
8 pursuant to that section, as long as the agency is not the employer
9 of the home care aide or other worker who provides to the clients
10 or consumers assistance with activities of daily living, including,
11 but not limited to, bathing, dressing, feeding, toileting, ambulation,
12 and transferring.

13 (H) A residential care facility for the elderly licensed under
14 Chapter 3.2 (commencing with Section 1569).

15 (h) “Priority one complaint” means a complaint of sexual abuse
16 that involves penetration, a complaint of physical abuse that
17 involves an act that results in great bodily injury, such as a broken
18 bone, severe cut, head injury, or burn, or a complaint of suspicious
19 circumstances regarding the death of a client.

20 (i) “Priority two complaint” means a complaint of sexual abuse
21 that involves sexual behavior that does not include penetration, a
22 complaint of physical abuse that involves an act that results in a
23 minor injury or bruise, or a complaint of felony offenses, including,
24 but not limited to, robbery, arson, grand theft, and chemical
25 restraint.

26 (j) “Residence” means a temporary or permanent location where
27 a client receives home care services.

28 (k) “Transportation” means transportation in a motor vehicle
29 in good working order provided by a home care aide who is a
30 licensed and insured driver.

31 1796.13. (a) For purposes of this chapter, “home care services”
32 means services provided by a home care aide to a client who,
33 because of advanced age or physical or mental infirmity, cannot
34 perform these services for himself or herself. These services
35 include, but are not limited to, bathing, dressing, feeding,
36 exercising, personal hygiene and grooming, transferring,
37 ambulating, positioning, toileting and incontinence care, assisting
38 with medication that the client normally self-administers,
39 housekeeping, meal planning and preparation, laundry,
40 transportation, correspondence, making telephone calls, shopping

1 for personal care items or groceries, and companionship. This
2 subdivision shall not be construed to authorize a home care aide
3 to administer medication that would otherwise require
4 administration or oversight by a licensed health care professional.

5 (b) Home care services shall not include any of the following:

6 (1) Services authorized to be provided by a licensed home health
7 agency under Chapter 8 (commencing with Section 1725).

8 (2) Services authorized to be provided by a licensed hospice
9 pursuant to Chapter 8.5 (commencing with Section 1745).

10 (3) Services authorized to be provided by a licensed health
11 facility pursuant to Chapter 2 (commencing with Section 1250).

12 (4) In-home supportive services provided pursuant to Article 7
13 (commencing with Section 12300) of Chapter 3 of Part 3 of
14 Division 9 of the Welfare and Institutions Code.

15 (5) Services authorized to be provided by a licensed residential
16 care facility for the elderly pursuant to Chapter 3.2 (commencing
17 with Section 1569).

18 (6) Services authorized to be provided pursuant to Section 2731
19 of the Business and Professions Code.

20 (c) This chapter shall not be construed to prohibit an individual
21 from employing a home care aide without the assistance of a home
22 care organization.

23 Article 2. Licensure

24
25
26 1796.20. (a) On and after July 1, 2014, subject to the
27 exceptions set forth in paragraph (2) of subdivision (f) of Section
28 1796.12, an individual, partnership, corporation, limited liability
29 company, joint venture, association, or other entity shall not arrange
30 for the provision of home care services by a home care aide to a
31 client in this state before obtaining a license pursuant to this
32 chapter.

33 (b) An individual or entity that violates subdivision (a) shall be
34 liable for a civil penalty not to exceed nine hundred dollars (\$900)
35 per day for each calendar day of each violation.

36 (c) Upon discovering that an individual or entity is in violation
37 of subdivision (a), the department shall send a written notice of
38 noncompliance to the individual or entity and to the Attorney
39 General or appropriate district attorney. Upon receiving this notice,

1 the Attorney General or district attorney shall do any or all of the
2 following:

3 (1) Issue a cease and desist order, which shall remain in effect
4 until the individual or entity has obtained a license pursuant to this
5 chapter. If the individual or entity fails to comply with the cease
6 and desist order within 20 calendar days, the Attorney General or
7 a district attorney shall apply for an injunction.

8 (2) Impose the civil penalty described in subdivision (b).

9 (3) Bring an action against the individual or entity under Chapter
10 5 (commencing with Section 17200) of Part 2 of Division 7 of the
11 Business and Professions Code.

12 (d) The requirements of this section shall not apply to an
13 employment agency, as defined in Section 1812.5095 of the Civil
14 Code, that procures, offers, refers, provides, or attempts to provide
15 a home care aide or other worker who provides home care services
16 or domestic services to clients and consumers pursuant to that
17 section, as long as the agency is not the employer of the home care
18 aide or other worker who provides assistance with activities of
19 daily living to the consumer.

20 1796.21. A home care organization that has its principal place
21 of business in another state, in addition to the other requirements
22 of this chapter, shall comply with both of the following
23 requirements before arranging for the provision of home care
24 services by a home care aide to a client in California:

25 (a) Have an office in California.

26 (b) Obtain authorization from the Secretary of State to conduct
27 business in California.

28 1796.22. The enactment of this chapter is an exercise of the
29 police power of the state for the protection of the public welfare,
30 prosperity, health, safety, and peace of its people. The civil
31 penalties provided by this chapter are in addition to any other
32 penalty provided by law.

33 1796.23. In order to carry out the provisions of this chapter,
34 the department may do any of the following:

35 (a) Adopt rules and regulations to implement this chapter.

36 (b) Establish procedures for the receipt, investigation, and
37 resolution of complaints against home care organizations.

38 (c) Investigate priority one and priority two complaints ~~by~~
39 *against* certified home care aides not employed by a home care

1 organization. The department may take disciplinary action in
2 accordance with subdivision (d) of Section 1796.30.

3 (d) (1) Maintain on the department's Internet Web site a registry
4 of, with the capability to look up the certification status of, any
5 certified home care aide, the name and geographic location of the
6 home care aide's employer, if there is one, or name and geographic
7 location of all employers if there are more than one, and any
8 disciplinary action taken against the home care aide. In the case
9 of a home care aide who is an independent contractor and not
10 employed by a home care organization, the Internet Web site shall
11 indicate that status. To expedite the ability of a consumer to search
12 and locate an appropriate home care aide, the Internet Web site
13 shall enable consumers to look up the certification status, including
14 any disciplinary action taken against the home care aide, by
15 providing the home care aide's name, certificate number, and
16 geographic location. The Internet Web site shall not provide any
17 additional, individually identifiable information about a home care
18 aide. The department also may request and maintain additional
19 employment information for a certified home care aide, as
20 necessary, which shall not be publicly available on the registry.

21 (2) The department shall update the Internet Web site upon
22 receiving notification from a certified home care aide that he or
23 she has left a home care organization or has changed home care
24 organizations.

25 (e) Maintain a registry on the department's Internet Web site
26 on the licensure status of all licensed home care organizations,
27 along with the name, address, and telephone number of the home
28 care organization, and the status of any ~~proposed or~~ completed
29 disciplinary action against the licensed home care organization.
30 The department also may request and maintain additional
31 information for a licensed home care organization, as necessary,
32 which shall not be publicly available on the registry.

33 1796.24. Notwithstanding any other provision of this chapter,
34 the department shall issue a home care organization license to an
35 entity that satisfies all of the following requirements:

36 (a) Files an application, including the fees required pursuant to
37 Section 1796.70.

38 (b) Submits proof of general and professional liability insurance
39 in the amount of at least one million dollars (\$1,000,000) per
40 occurrence and three million dollars (\$3,000,000) in the aggregate.

1 (c) Submits proof of a valid workers' compensation policy
2 covering its home care aides. The proof shall consist of the policy
3 number, the effective and expiration dates of the policy, and the
4 name and address of the policy carrier.

5 (d) Provides the department with a complete list of its home
6 care aides, and proof that each satisfies the requirements of Section
7 1796.60.

8 (e) The owner or owners of the home care organization pass a
9 background clearance, as required pursuant to Section 1796.26.

10 1796.25. (a) The term of a license issued pursuant to this
11 chapter shall be two years.

12 (b) A license may be renewed upon application to the department
13 and the payment of a renewal fee prescribed by the department.

14 (c) At least 90 days before the expiration of a license, the
15 department shall mail to the licensee, at the latest address furnished
16 by the licensee to the department, a notice stating the amount of
17 the renewal fee and the date on which it is due, and that failure to
18 pay that fee on or before the date due will result in the expiration
19 of the license.

20 1796.26. (a) In order to obtain a license, the following
21 individual or individuals shall consent to the background clearance
22 described in Section 1796.62:

23 (1) The owner or owners of a home care organization if the
24 owners are individuals.

25 (2) If the owner of a home care organization is a corporation,
26 limited liability company, joint venture, association, or other entity,
27 an individual having a 10-percent or greater interest in that entity.

28 (b) (1) If the background clearance conducted pursuant to
29 subdivision (a) discloses a conviction for a crime that is
30 substantially related to the qualifications, functions, or duties of
31 operating a home care organization, the application for a license
32 may be denied.

33 (2) Notwithstanding paragraph (1), a license shall not be denied
34 under this section if the applicant has obtained a certificate of
35 rehabilitation under Chapter 3.5 (commencing with Section
36 4852.01) of Title 6 of Part 3 of the Penal Code or the information
37 or accusation against him or her has been dismissed pursuant to
38 Section 1203.4 of the Penal Code.

39 (c) In determining whether or not to deny the application for
40 licensure or renewal pursuant to subdivision (b), the department

1 shall take into consideration the following factors as evidence of
2 good character and rehabilitation:

3 (1) The nature and seriousness of the conduct or crime under
4 consideration and its relationship to the person's employment
5 duties and responsibilities.

6 (2) Activities since conviction, including employment or
7 participation in therapy or education, that would indicate changed
8 behavior.

9 (3) The time that has elapsed since the commission of the
10 conduct or offense referred to in paragraph (1) or (2) and the
11 number of offenses.

12 (4) The extent to which the person has complied with any terms
13 of parole, probation, restitution, or any other sanction lawfully
14 imposed against the person.

15 (5) Any rehabilitation evidence, including character references,
16 submitted by the person.

17 (6) Employment history and current employer recommendations.

18 (7) Circumstances surrounding the commission of the offense
19 that would demonstrate the unlikelihood of repetition.

20 (d) If the department makes a determination to deny an
21 application, the department shall notify the applicant of this
22 determination by either personal service or registered mail. The
23 notice shall include the following information:

24 (1) A statement of the department's reasons for the denial that
25 evaluates evidence of rehabilitation submitted by the applicant, if
26 any, and that specifically addresses any evidence submitted relating
27 to the factors considered in subdivision (c).

28 (2) A copy of the applicant's criminal offender record
29 information search response. The department shall provide this
30 information in a manner that protects the confidentiality and
31 privacy of the criminal offender record information search
32 response.

33 (A) The state criminal history record shall not be modified or
34 altered from its form or content as provided by the Department of
35 Justice.

36 (B) The department shall record the date the copy of the
37 response was provided to the individual.

38 (C) The criminal offender record information search response
39 shall not be made available by the department to any individual
40 other than the applicant.

(3) An opportunity to correct inaccurate information on the record by submitting certified court minute orders to the department.

(e) (1) Upon written notification that the department has determined that a license shall be denied, the applicant may request an administrative hearing by submitting a written request to the department within 15 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing consistent with the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this subdivision shall be conducted by a hearing officer or administrative law judge designated by the director. A written decision shall be sent by certified mail to the applicant.

1796.27. A private or public organization, with the exception of a county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and the exceptions provided for in subdivision (c), shall not do any of the following, unless it is licensed under this chapter:

(a) Represent itself to be a home care organization by its name or advertising, soliciting, or any other presentments to the public, or in the context of services within the scope of this chapter, imply that it is licensed to provide those services or to make any reference to employee bonding in relation to those services.

(b) Use the terms “home care organization,” “home care,” “in-home care,” or any combination of those terms, within its name.

(c) This section does not apply to either of the following:

(1) A county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide a home care aide or other worker who provides home care services or domestic services to clients and consumers pursuant to that section, as long as the agency is not the employer of a home care aide or other worker who provides domestic services.

Article 3. Complaints, Inspections, and Investigations

1796.30. (a) The department may review and, if it determines necessary, investigate complaints filed against home care organizations or home care aides not employed by a home care organization that meet the specified definition of a priority one or priority two complaint.

(b) The department shall verify through random, unannounced inspections at least once every five years that a home care organization meets the requirements of this chapter and the regulations adopted pursuant thereto.

(c) An investigation or inspection conducted by the department pursuant to this chapter may include, but is not limited to, the following:

(1) Inspection of the books, records, and premises of a home care organization. A home care organization's refusal to make those records, books, or premises available shall constitute cause for the revocation of the home care organization's license.

(2) Direct observation of the provision of home care services to a client in the client's residence, if the client's consent is obtained.

(d) If the department determines that a home care aide is in violation of this chapter or any rules promulgated hereunder, a notice of violation shall be served upon the individual. Each notice of violation shall be prepared in writing and shall specify the nature of the violation and the statutory provision or rule alleged to have been violated. The notice shall inform the individual of any action the department may take under this chapter, including an action to suspend, revoke, or deny renewal of the certificate. The director or his or her designee shall also inform the individual of his or her rights to a hearing under this chapter.

Article 4. Home Care Organization Operating Requirements

1796.40. A home care organization shall do all of the following:

(a) Post its license in its place of business in a conspicuous location, visible both to clients and to its home care aides.

(b) Operate the home care organization in a commercial office space that complies with local zoning ordinances.

(c) Have plans, procedures, and policies in place, including all of the following:

(1) Plans and procedures to be followed in the event of emergencies or natural disasters that would result in the interruption of home care services.

(2) A documented backup staffing plan in the event that a home care aide scheduled to provide home care services becomes unavailable.

(3) A written policy regarding advance directives.

(4) A receipt and disbursement policy for expenditures made on behalf of a client to ensure that financial abuse does not occur.

(d) Maintain a valid workers' compensation policy covering its home care aides.

(e) Maintain an employee dishonesty bond, including third-party coverage, with a minimum limit of ten thousand dollars (\$10,000).

(f) Comply with the regulations adopted by the department implementing this chapter.

1796.41. With respect to home care aides employed by a home care organization, the home care organization shall consult the department's registry, if a registry is maintained by the department, before hiring an individual or placing him or her in direct contact with patients. In addition, the home care organization shall do all of the following:

(a) (1) Ensure that each of its home care aides employed before January 1, 2015, meets the requirements of Section 1796.61 no later than July 1, 2015.

(2) Ensure that all individuals hired on or after January 1, 2015, have met the requirements of Section 1796.61 before being hired as a home care aide.

(b) (1) Investigate complaints made by a client, or a client's family member or guardian, against home care aides regarding a service that is or fails to be furnished. The home care organization shall document both the existence and the resolution of those complaints.

(2) If the home care organization completes an investigation of a complaint against a home care aide pursuant to paragraph (1) and finds that, in its opinion, the home care aide is in violation of this chapter, the home care organization shall immediately notify the department in order for the department to take the appropriate steps, which may include revoking the home care aide's certificate.

1 (c) Evaluate home care aides as follows:

2 (1) Conduct an annual assessment of the performance and
3 effectiveness of each home care aide, including, if client consent
4 is obtained, at least one observation of the aide providing home
5 care services in the residence of a client.

6 (2) Every 90 days, supervise each home care aide providing
7 home care services in the residence of a client, provided that client
8 consent is obtained. The supervision required by this paragraph
9 shall not be billed to the client.

10 (d) Ensure that a home care aide, when providing services to a
11 client, has access at all times to a representative of the home care
12 organization who is in a supervisory capacity and who does not
13 regularly render home care services to that client.

14 (e) Require a home care aide, while providing home care
15 services, to wear a badge that includes all of the following
16 information in 12-point type or larger:

17 (1) The aide's name.

18 (2) A photograph of the aide.

19 (3) The name of the home care organization.

20 (4) The expiration date of the license of the home care
21 organization.

22 (5) The home care aide's certificate number as issued by the
23 department.

24 (f) Require home care aides to demonstrate that they are free
25 of active tuberculosis, pursuant to Section 1796.63.

26 (g) Require home care aides to annually complete not less than
27 five hours of department-approved training on job-related topics.

28 (h) Prohibit home care aides from accepting money or property
29 from a client without written permission from the home care
30 organization.

31 (i) Immediately notify the department when the home care
32 organization no longer employs an individual as a home care aide
33 in order for the department to update its Internet Web site.

34
35 Article 4.5. Employment Agency Insurance

36
37 1796.45. (a) An employment agency, as defined in Section
38 1812.5095 of the Civil Code, that procures, offers, refers, provides,
39 or attempts to provide a home care aide who provides home care
40 services or other worker who provides assistance with activities

1 of daily living to the client or consumer pursuant to that section,
2 shall, at all times, maintain general and professional liability
3 insurance in the amount of at least one million dollars (\$1,000,000)
4 per occurrence and three million dollars (\$3,000,000) in the
5 aggregate.

6 (b) An employment agency shall submit to the department proof
7 of insurance required pursuant to subdivision (a) no later than July
8 1, 2014, and annually thereafter.

9 (c) The department may assess a civil penalty not to exceed
10 nine hundred dollars (\$900) a day for violation of this section.

11 (d) Nothing in this section shall authorize the department to
12 assess a civil penalty on an employment agency for lack of
13 coverage if the lack of coverage is found to be the fault of the
14 professional liability insurer.

15 Article 5. Client Rights

16 1796.50. With respect to clients, a home care organization shall
17 do all of the following:

18 (a) Advise a client of any change in the client's plan for home
19 care services.

20 (b) Before arranging for the provision of home care services to
21 a client, do all of the following:

22 (1) Distribute to the client its advance directive policy, along
23 with a written summary of applicable state law.

24 (2) Advise the client of its policy regarding the disclosure of
25 client records.

26 (3) Inform the client of the types and hours of available home
27 care services.

28 (4) Inform the client, orally and in writing, of the home care
29 services that are or are not covered by Medi-Cal or Medicare, as
30 applicable, and the extent to which payment may be expected from
31 the client, from Medicare or Medi-Cal, and from any other source.

32 (c) Inform the client, both orally and in writing, of a change to
33 the information provided in paragraph (4) of subdivision (b) as
34 soon as possible, but not later than 30 days of becoming aware of
35 that change.

36 (d) Have a written agreement with the client that includes, but
37 is not limited to, the cost of and the hours during which home care
38 services will be provided to the client and reference to the personal
39
40

1 attendant requirements, if applicable, as referenced in Wage Order
2 15-2001, issued by the Industrial Welfare Commission.

3 1796.51. (a) Home care clients are entitled to the following
4 rights:

5 (1) The right to have the client's property treated with respect.

6 (2) The right to voice grievances free from reprisal regarding a
7 home care service that is or fails to be provided or regarding the
8 violation of any of the rights listed in this section.

9 (3) The right to be informed of and to participate in the planning
10 of the client's home care services.

11 (4) The right to confidentiality of the client's personal
12 information.

13 (b) Before arranging for the provision of home care services to
14 a client, a home care organization shall provide a written notice
15 to the client stating that the client has all of the rights enumerated
16 in subdivision (a).

17 (c) A home care organization shall maintain written
18 documentation showing that it has complied with subdivision (a).

19 (d) If a client lacks the capacity to understand the rights listed
20 in this section, as determined by a court of competent jurisdiction
21 or by the client's physician, unless the physician's opinion is
22 controverted by the client or the client's legal representative, the
23 client's legal representative shall have those rights.

24 (e) A home care organization shall protect, and promote the
25 exercise of, the rights listed in this section.

26
27 Article 6. Home Care Aides
28

29 1796.60. (a) (1) Beginning January 1, 2015, the department
30 shall require any person hired as a home care aide on or after
31 January 1, 2015, to be certified before being hired and shall require
32 that any home care aide or person providing assistance with
33 activities of daily living to the client or consumer referred by an
34 employment agency, as defined in Section 1812.5095 of the Civil
35 Code, be certified prior to any referral.

36 (2) The term of a certificate issued pursuant to this chapter shall
37 be two years. The certificate may be renewed upon application to
38 the department and payment of the renewal fee prescribed by the
39 department pursuant to this chapter.

(b) In order to receive a certificate from the department to provide home care services for the elderly or persons with disabilities, a home care aide shall meet the minimum training requirements in this section. Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section.

(c) (1) A prospective home care aide shall complete a minimum of five hours of entry-level training, as follows:

(A) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment.

(B) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control.

(C) Other training related to core competencies and population-specific competencies as required by regulation, which shall include, but are not limited to, the following areas:

(i) Client rights and safety.

(ii) How to provide for and respond to a client's daily living needs.

(iii) How to report, prevent, and detect abuse and neglect.

(iv) How to assist a client with personal hygiene and other home care services.

(v) If transportation services are provided, how to safely transport a client.

(2) If the department determines that the training required by paragraph (1) is unavailable in an applicant's county, the department shall issue a temporary home care aide certificate to that individual that will be valid until the date that proper training is made available in that county. Upon completion of the required training, the department shall replace the temporary home care aide certificate and issue a permanent home care aide certificate.

(3) The entry-level training, and annual training on department-approved job-related topics, may be completed through an online training program.

(d) The department shall only approve a training curriculum that satisfies both of the following conditions:

(1) The training curriculum has been developed with input from consumer and worker representatives.

(2) The training curriculum requires comprehensive instruction by qualified instructors on the competencies and training topics identified in this section.

1 (e) The applicant shall consent to the background clearance
2 described in Section 1796.62.

3 (f) The department shall issue a home care aide certificate to
4 each individual who meets the requirements of this section.

5 (g) The department shall set a fee for certification under this
6 section that shall be paid for by the home care aide.

7 (h) The applicant shall submit to an examination, as defined in
8 Section 1796.63, to determine if he or she is free of active
9 tuberculosis.

10 1796.61. (a) On and after January 1, 2015, a home care
11 organization shall not hire an individual as a home care aide unless
12 the individual complies with all of the following requirements:

13 (1) Completes an individual interview, to the satisfaction of the
14 home care organization.

15 (2) Provides at least two work- or school-related references or,
16 for an individual with no previous work experience, at least two
17 character references from nonrelatives. The home care organization
18 shall verify the references before hiring the individual.

19 (3) Demonstrates that he or she possesses sufficient language
20 skills to read and understand instructions, prepare and maintain
21 written reports and records, and communicate with a client.

22 (4) Provides proof of certification as a home care aide, pursuant
23 to Section 1796.60.

24 (b) For home care aides employed by a home care organization
25 before January 1, 2015, a certificate pursuant to this chapter shall
26 be obtained by July 1, 2015, in order for both the home care aide
27 and the home care organization to be in compliance with this
28 chapter.

29 (c) (1) Notwithstanding any other provision of law, an
30 employment agency, as defined in Section 1812.5095 of the Civil
31 Code, shall ensure that any home care aide it refers to provide
32 home care services, or person it refers who provides assistance
33 with activities of daily living to the client or consumer, has been
34 certified under Section 1796.60 prior to the referral.

35 (2) The department may investigate complaints against an
36 employment agency, as defined in Section 1812.5095 of the Civil
37 Code, including, but not limited to, complaints made by a client
38 or a client's family member or guardian if the employment agency
39 fails to comply with the provisions of this section. An employment
40 agency that violates this subdivision shall be liable for a civil

1 penalty not to exceed nine hundred dollars (\$900) per day for each
2 calendar day of each violation.

3 1796.62. (a) A background clearance is required, unless the
4 individual holds a valid, unexpired license, certification, or
5 registration in a health-related field that requires a background
6 check as a condition of the license, certification, or registration.

7 (b) (1) The applicant shall electronically submit to the
8 Department of Justice fingerprint images and related information
9 required by the Department of Justice of all home care aides, as
10 defined under subdivision (e) of Section 1796.12, for the purposes
11 of obtaining information as to the existence and content of a record
12 of state convictions and state arrests, and also information as to
13 the existence and content of a record of state arrests for which the
14 Department of Justice establishes that the person is free on bail or
15 on his or her own recognizance pending trial or appeal.

16 (2) The Department of Justice shall provide a state response to
17 the department pursuant to paragraph (1) of subdivision (n) of
18 Section 11105 of the Penal Code.

19 (3) The department shall request from the Department of Justice
20 subsequent arrest notification service, as provided pursuant to
21 Section 11105.2 of the Penal Code, for persons described in
22 paragraph (1).

23 (4) The Department of Justice shall charge a fee not to exceed
24 the actual cost of processing the request described in this
25 subdivision.

26 (c) If the background check required by subdivision (b) discloses
27 a conviction or incarceration for a conviction of any of the
28 following provisions of the Penal Code within 10 years, the
29 department shall deny the home care aide certification to that
30 individual:

31 (1) A violation of subdivision (a) of Section 273a of the Penal
32 Code, or Section 368 of the Penal Code, or similar violations in
33 another jurisdiction.

34 (2) A violent or serious felony, as specified in subdivision (c)
35 of Section 667.5 of the Penal Code and subdivision (c) of Section
36 1192.7 of the Penal Code.

37 (3) A felony offense for which a person is required to register
38 under subdivision (c) of Section 290 of the Penal Code. For
39 purposes of this subparagraph, the 10-year time period specified
40 in this section shall commence with the date of conviction for, or

1 incarceration following a conviction for, the underlying offense,
2 and not the date of registration.

3 (d) Notwithstanding subdivision (c), a certification shall not be
4 denied under this section if the applicant has obtained a certificate
5 of rehabilitation under Chapter 3.5 (commencing with Section
6 4852.01) of Title 6 of Part 3 of the Penal Code or the information
7 or accusation against him or her has been dismissed pursuant to
8 Section 1203.4 of the Penal Code.

9 (e) Upon determination to deny an application, if the denial of
10 a certificate is due at least in part to the applicant's state criminal
11 history record, the department shall notify the applicant of this
12 determination by either personal service or registered mail, and
13 the notification shall include the same information as required in
14 subdivision (d) of Section 1796.26.

15 (f) An applicant who has been convicted of an offense identified
16 in subdivision (c) may seek from the department a general
17 exception to the exclusion provided for in this section. The
18 department shall consider the same factors when determining
19 whether to grant a general exception as considered in subdivision
20 (c) of Section 1796.26.

21 (g) (1) Upon written notification that the department has
22 determined that a request for exception shall be denied, the
23 applicant may request an administrative hearing by submitting a
24 written request to the department within 15 business days of receipt
25 of the written notification. Upon receipt of a written request, the
26 department shall hold an administrative hearing consistent with
27 the procedures specified in Section 100171, except where those
28 procedures are inconsistent with this section.

29 (2) A hearing under this subdivision shall be conducted by a
30 hearing officer or administrative law judge designated by the
31 director. A written decision shall be sent by certified mail to the
32 applicant.

33 (h) The applicant shall complete and pay for the background
34 clearance specified in subdivision (b).

35 (i) A home care aide employed on or after July 1, 2014, shall
36 not be permitted to provide home care services until he or she
37 passes the background clearance pursuant to this section.

38 1796.63. (a) An individual hired as a home care aide on or
39 after January 1, 2015, shall be terminated from employment unless
40 the individual submitted to an examination within six months prior

1 to employment to determine that the individual is free of active
2 tuberculosis. For purposes of this section, “examination” consists
3 of a tuberculin skin test and, if that test is positive, an X-ray of the
4 lungs.

5 (b) A home care aide whose employment with a home care
6 organization began before January 1, 2015, shall submit to the
7 examination described in subdivision (a) before July 1, 2015.

8 (c) After submitting to an examination, a home care aide whose
9 tuberculin skin test is negative shall be required to undergo an
10 examination at least once every two years. Once a home care aide
11 has a documented positive skin test that has been followed by an
12 X-ray, the examination is no longer required.

13 (d) After the examination, a home care aide shall submit, and
14 the home care organization shall keep on file, a certificate from
15 the examining practitioner showing that the home care aide was
16 examined and found free from active tuberculosis.

17 (e) The examination is a condition of initial and continuing
18 employment with the home care organization. The home care aide
19 shall pay the cost of the examination.

20 (f) A home care aide who transfers employment from one home
21 care organization to another shall be deemed to meet the
22 requirements of subdivision (a) or (b) if that individual can produce
23 a certificate showing that he or she submitted to the examination
24 within the past two years and was found to be free of
25 communicable tuberculosis, or if it is verified by the home care
26 organization previously employing him or her that it has a
27 certificate on file which contains that showing.

28 (g) Notwithstanding the results of an examination, a home care
29 aide shall annually complete a tuberculosis survey that includes,
30 but is not limited to, all of the following information:

31 (1) The individual’s name, address, and telephone number.

32 (2) The date and result of all previous tuberculin skin tests and,
33 where applicable, all X-ray examinations.

34 (3) Answers to questions concerning whether the individual has
35 recently experienced any of the following symptoms:

36 (A) A chronic cough for a period exceeding two weeks.

37 (B) Chronic fatigue or listlessness for a period exceeding two
38 weeks.

39 (C) Fever for a period exceeding one week.

40 (D) Night sweats.

1 (E) Unexplained weight loss of eight pounds or more.

2
3 Article 7. Revenues
4

5 1796.70. (a) The department shall assess licensure and
6 certification fees in amounts sufficient to support the costs of each
7 activity authorized by this chapter. Except for General Fund
8 moneys that are otherwise transferred or appropriated for the initial
9 costs of administering this chapter, or penalties collected pursuant
10 to this chapter that are appropriated by the Legislature for the
11 purposes of this chapter, no General Fund moneys shall be used
12 for any purpose under this chapter.

13 (b) The Home Care Organization and Home Care Aide Fund is
14 hereby created within the State Treasury for the purpose of this
15 chapter. All licensure and certification fees authorized by this
16 chapter shall be deposited into the Home Care Organization and
17 Home Care Aide Fund. Moneys in this fund shall, upon
18 appropriation by the Legislature, be made available to the
19 department for purposes of administering this chapter.

20 (c) The licensure fee shall be equivalent to the cost of
21 administering the licensure program, as defined by the department.

22 (d) The certification fee shall be equivalent to the cost of
23 administering the certification program, as defined by the
24 department.

25 (e) Commencing February 1, 2015, and every February 1
26 thereafter, the department shall publish the fees estimated pursuant
27 to this section. The calculation of estimated fees and the publication
28 of estimated fees shall not be subject to the rulemaking
29 requirements of Chapter 3.5 (commencing with Section 11340) of
30 Part 1 of Division 3 of Title 2 of the Government Code. By
31 February 1 of each year, the department shall make the fee
32 estimates available to the public by submitting them to the
33 Legislature and posting them on the department's Internet Web
34 site.

35 (f) (1) The department shall prepare a report of all costs for
36 home care licensure and home care aide certification activities. At
37 a minimum, this report shall include a narrative of all baseline
38 adjustments and their calculations, descriptions of assumptions
39 used in any calculations, and shall recommend home care

1 organization licensure fees and home care aide certification fees
2 sufficient to support projected costs.

3 (2) The department shall make a copy of the report available to
4 the public on the department's Internet Web site and provide a
5 copy to the Legislature. A report to the Legislature shall be
6 submitted in compliance with Section 9795 of the Government
7 Code.

8
9 Article 8. Enforcement and Penalties

10
11 1796.80. (a) A home care organization or employment agency,
12 as defined in Section 1812.5095 of the Civil Code, providing
13 certified home care aides, that operates in violation of any
14 requirement or obligation imposed by this chapter or any
15 implementing rule or regulation, may be subject to the fines levied
16 or licensure action taken by the department as specified in this
17 section.

18 (b) When the department determines that a home care
19 organization is in violation of this chapter or any rules promulgated
20 hereunder or that an employment agency is in violation of Section
21 1796.45 or subdivision (a) of Section 1796.60, a notice of violation
22 shall be served upon the licensee. Each notice of violation shall
23 be prepared in writing and shall specify the nature of the violation
24 and the statutory provision or rule alleged to have been violated.
25 The notice shall inform the licensee of any action the department
26 may take under this chapter, including the requirement of an agency
27 plan of correction, assessment of a penalty, or action to suspend,
28 revoke, or deny renewal of the license. The director or his or her
29 designee shall also inform the licensee of rights to a hearing under
30 this chapter.

31 (c) The department may impose a fine of up to nine hundred
32 dollars (\$900) per violation per day commencing on the date the
33 violation was identified and ending on the date each violation is
34 corrected, or action is taken to suspend, revoke, or deny renewal
35 of the license, whichever comes first.

36 (d) In determining the penalty or licensure action, the director
37 shall consider all of the following factors:

38 (1) The gravity of the violation, including the probability that
39 death or serious physical or mental harm to a client will result or
40 has resulted, the severity of the actual or potential harm, and the

1 extent to which the provisions of the applicable statutes or
2 regulations were violated.

3 (2) The reasonable diligence exercised by the licensee and
4 efforts to correct violations.

5 (3) Any previous violation committed by the licensee.

6 (4) The financial benefit to the home care organization of
7 committing or continuing the violation.

8 (e) The department shall adopt regulations establishing
9 procedures for notices, correction plans, appeals, and hearings. In
10 developing the procedures, the department shall convene and
11 consult with a working group of affected stakeholders.

12 1796.81. Any fines and penalties collected pursuant to this
13 chapter shall be deposited into the Home Care Organization and
14 Home Care Aide Penalties Subaccount, which is hereby created
15 within the Home Care Organization and Home Care Aide Fund
16 created pursuant to Section 1796.70. Moneys in this account shall,
17 upon appropriation by the Legislature, be made available to the
18 department for purposes of enforcing this chapter.

O